76-1455

In The

Supreme Court of the United States

October Term, 1976

No. 76

WELLMAN INDUSTRIES, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

ROBERT M. SALTZSTEIN
ROBERT M. ZISKIN
MIRKIN, BARRE, SALTZSTEIN & GORDON, P.C.
Attorneys for Petitioner
98 Cutter Mill Road
Great Neck, New York 11021
(516) 466-6030

(9589)

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

The petitioner, Wellman Industries, Inc., respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered in this proceeding on February 28, 1977.

OPINION BELOW

The decision and order of the National Labor Relations Board is reported at 222 NLRB No. 44 and is printed in Appendix A. The opinion of the United States Court of Appeals for the District of Columbia Circuit, not yet officially reported, is printed in Appendix B.

JURISDICTION

The judgment of the Court of Appeals for the District of Columbia Circuit was entered on February 28, 1977. A timely petition for rehearing and a suggestion for rehearing en banc were denied on March 22, 1977 and this petition for certiorari was filed within ninety (90) days of that date.[1] This Court's jurisdiction is invoked under 28 U.S.C. Section 1254(1).

QUESTION PRESENTED

May an employer, during the time period it is contesting a National Labor Relations Board certification of a labor organization as the collective bargaining representative of its bargaining unit employees, make unilateral changes in terms and conditions of employment of such employees?

STATUTORY PROVISIONS INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Section 151, *et al.*) are as follows:

FINDINGS AND POLICIES

Section 1. The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the

1. A motion for a stay of mandate pending application for Writ of Certiorari was granted on April 8, 1977 and the Clerk of the Court of Appeals for the District of Columbia was directed not to issue the mandate in this case prior to April 21, 1977.

flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

Section 8. (a) It shall be an unfair labor practice for an employer —

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7. . . .

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a).

REPRESENTATIVES AND ELECTIONS

• • •

Section 9. (c)(1) Wherever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board —

A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a), or (ii) assert that the individual or labor organization, which has been certified or is being recognized by their employer as the

bargaining representative, is no longer a representative as defined in section 9(a); or

B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a);

the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the person filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c).

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two

choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) the extent to which the employees have organized shall not be controlling.

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STATEMENT OF THE CASE

Wellman Industries, Inc., (herein "Wellman"), a manufacturer engaged in the production of wool and polyester fiber products, maintains its production plant in Johnsonville, South Carolina.

Pursuant to the filing of a petition for certification under Section 9(c) of the National Labor Relations Act, (herein the "Act"), by the Textile Workers Union of America, AFL-CIO, (herein the "Union"), the Regional Director of the Eleventh Region of the National Labor Relations Board, (herein the "Board"), on October 27, 1971 issued a decision and direction of election setting forth the appropriate unit for the purpose of collective bargaining. A representation election was conducted on November 17th and 18th, 1971, and a majority of the eligible voters rejected the Union as their bargaining representative by a vote of 499 to 488.

On November 26, 1971, the Union filed objections to conduct affecting the results of the election alleging in relevant part that "the employer through its agents, made misrepresentations which involved a substantial departure from

the truth at a time when the [Union] had no opportunity at all to make a reply."

On February 10, 1972, the regional director, without directing a hearing to be held on the matters raised, issued a supplemental decision, order and direction of second election in which he ordered that the first election be set aside and that a second election be conducted.

A request for review of the regional director's decision was filed by Wellman with the Board on May 9, 1972 setting forth its position that it had been improperly denied a hearing on the election objections and denied access to statements taken during the region's investigation in violation of the then existing provisions of the Freedom of Information Act.

Wellman's request for review was denied by the Board and a second election was held on April 19 and 20, 1972, wherein a majority of voters (557-466) designated the Union as their bargaining representative. Wellman thereupon filed timely objections to the election contending that the Union (1) had engaged in a campaign of trickery through the use of printed materials and other means of communication; (2) exerted repeated pressure on voters during the campaign; (3) engaged in a course of violence; and (4) handed out at the gate of its plant, on the date of the election, campaign literature which was intended to deceive the employees and to which the employer had no opportunity to reply.

Upon the conclusion of his ex parte investigation of Wellman's objections to the second election, the regional director, on June 14, 1972, issued his second supplemental decision and certification of representatives overruling each of Wellman's objections.

As a result of this decision, the Union was certified as the bargaining representative for the Wellman employees.

On September 26, 1972, Wellman received a request from the Union to bargain and on October 4, 1972 advised the Union by letter that it would not bargain due to the serious question concerning the validity of the Union's certification.

As this Court is no doubt aware, Wellman could only challenge the validity of the Board's certification of the Union by refusing to bargain with said Union. As a result of Wellman's refusal to bargain, the Union filed a refusal to bargain charge with the Board and further derivatively alleged that Wellman had further violated the Act by (1) unilaterally granting a wage increase to unit employees in October of 1972; (2) laying off certain employees in August, 1972, and (3) promulgating a new absence and tardiness rule in January, 1973.

Upon the aforesaid unfair labor practice charges filed by the Union, and following a hearing, the Board issued a decision and order (211 NLRB No. 96) on June 17, 1974, in which it found that by refusing to bargain with the Union, Wellman had violated Section 8(a)(5) and (1) of the Act.

In an effort to seek court review of the Union's certification, Wellman appealed the Board's aforementioned decision to the United States Court of Appeals for the Fourth Circuit. On April 1, 1975, the Court of Appeals for the Fourth Circuit granted enforcement of the Board's order in a *per curiam* decision, 519 F.2d 1401, 88 LRRM 3303, *cert. denied,* November 3, 1975, ___ U.S. ___, 90 LRRM 2921.

While challenging the appropriateness of the Union's previously described certification, Wellman was confronted with the problem of continuing to run its business operations during a period of constantly changing business and economic conditions.

In particular, during the period July 1, 1974 through March

of 1975, Wellman laid off some 366 of its employees.[2] As recognized by Administrative Law Judge Charles Schneider, such reductions were economically or operationally motivated rather than motivated by any anti-union animus. Significantly, substantially all of the laid off bargaining unit employees were recalled to work on or before April 1, 1975.

During this same period and as a result of pressing economic and operational conditions, Wellman transferred a number of bargaining unit employees to other positions within the bargaining unit. In this connection, some employees' hourly pay rates were reduced by virtue of the fact that their new positions called for lower hourly pay rates.

Further, in or about June of 1974, Wellman modified its then existing on-call system as it pertained to maintenance employees. Whereas prior to June of 1974, Wellman's maintenance employees were subject to call to work 24 hours a day, seven days per week, subsequent to June of 1974 each employee was assigned to one of five teams — subject to call every fifth week for a period of seven consecutive days.

Significantly, the aforesaid on-call rule was not changed because of anti-union animus, but rather to equalize overtime opportunities among the mechanics.

Finally, in or about September of 1973, Wellman instituted a program at the Florence Darlington Technical Institute so as to upgrade the skills of its maintenance department employees. Specifically, maintenance department employees were requested, on a non-compulsory basis, to attend the program with the promise of wage increases and other benefits upon completion of the program. As a safeguard, all such employees were notified that their jobs would not be jeopardized if they choose not to participate in the program.

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2. During this period, Wellman's employment roles fluctuated from a high of 1178 employees to a low of approximately 762 employees.

As the training program was conducted during the evening hours, it conflicted with the schedules of those maintenance employees working on the night shift. Therefore, in an effort to alleviate the work-training conflict, Wellman assigned all maintenance employees attending the training program to the day shift, thereby requiring a number of regularly scheduled day shift employees to be temporarily transferred to the night shift.

As a result of Wellman's aforementioned actions, the Union on various dates during the period August, 1974 through May, 1975, filed unfair labor practice charges with the Board. Such charges formed the basis of the Board's decision in the instant matter as more fully set forth in Appendix A.

As noted by Administrative Law Judge Schneider in his decision and recommended order and as acknowledged by Counsel for the General Counsel, Wellman's previously described actions were not motivated by anti-union animus, but rather by economic and operational activities.

REASONS FOR GRANTING THE WRIT

The Court of Appeals has decided an important question of federal labor law in a case of novel impression which requires decision by the Supreme Court of the United States.

Upon having reviewed the Board's decision and order, it should be clear that Wellman's decisions to lay off, transfer, change employee shift rotations and wage rates were solely motivated by economic and operational considerations which have for the past several years prevailed in the textile industry.

As the aforementioned management decisions were instituted solely due to the economic and operational conditions and as the status quo was restored as soon as business conditions permitted, it is respectfully urged that the Board's finding that Wellman violated its obligation to bargain be

reversed. As previously noted, Wellman had no recourse but to refuse to bargain with the Union so as to secure court review of the Board's certification. *Boire v. Greyhound Corp.*, 376 U.S. 473.

Where, as here, an employer's actions are free of anti-union animus, such an employer should be permitted to institute such business decisions as may be necessary while testing the validity of a union's certification. Such a concept is in conformity with the statutory intent of Section 1 of the Act which seeks the prevention ". . . of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce."

At the present moment, an employer seeking to challenge the validity of a Board certification through the courts must proceed at his peril should he choose to take any unilateral action pertaining to his employees' terms and conditions of employment. Such a situation is both intolerable and chaotic for the employer faced with legitimate and pressing economic and operational pressures. Thus, in circumstances such as the instant one, consideration must be accorded so as to permit an employer to make independent business judgments and so as to preserve the free flow of goods and services in commerce.

Hence, the employer contends that the Supreme Court's decision in *N.L.R.B. v. Katz,* 369 U.S. 736, is instructive. Although the Court in *N.L.R.B. v. Katz, supra,* found certain unilateral acts having taken place during bargaining to be unlawful, the Court recognized that an employer's unilateral actions might be excused or justified in certain circumstances.

Thus, it is respectfully contended that, where as here, an employer contests a Board certification in an atmosphere which is free from anti-union animus, such an employer's unilateral

actions, if instituted as a result of legitimate economic or operational reasons, should constitute appropriate justification or excuse for such action.

The necessity for a rule excusing or justifying the unilateral actions of an employer contesting a Board certification is accentuated by the Board's most recent decision in the matter of *Handy Andy, Inc.*, 228 NLRB No. 59 (decided February 25, 1977).

In *Handy Andy, supra,* the Board reversed its 1974 ruling in *Bekins Moving & Storage Co.*, 211 NLRB No. 138, wherein it held that within five days from the issuance of a tally of ballots cast in a representation election, an employer had the right to raise, through an objection to the union's certification, a contention that certification should be denied because the union engages in racial discrimination or some other form of invidious discrimination.

Significantly, in *Handy Andy, supra,* the Board has rejected its prior ruling enunciated in *Bekins, supra,* and now holds that prior to a union's certification by the Board, an employer may not raise issues as to whether the union engaged in racial discrimination or any invidious discrimination. Rather, according to the *Handy Andy* decision, an employer may only seek revocation of a union's certification by means of an unfair labor practice hearing.

Thus, as in the instant case, where the employer was challenging a union's certification upon the ground that such union engaged in a pre-election campaign marked by misrepresentation and trickery, so too now an employer seeking to set aside an election because of a union's policy of racial discrimination is relegated to resolving such issues in the context of an unfair labor practice hearing.

As the Board and the Act itself have relegated employers challenging the validity of a union's certification to proceed through unfair labor practice hearings and through court proceedings, there must be a balancing of the equities. Thus, where an employer seeks to challenge a union's certification and where the record reveals such an employer has acted in an atmosphere free from anti-union animus, such employer should be excused or justified in taking reasonable unilateral actions during the pendency of its challenge to the union's certification.

To both limit an employer's line of appeal and to require him to act at his peril while pursuing such an appeal, casts the employer and his business in an uncertain, intolerable and chaotic situation. Clearly, the legislative intent of the Act as set forth in Section 1 thereof, did not intend to place unnecessary and unreasonable restraints and obstructions upon the employer engaged in commerce.

CONCLUSION

For the foregoing reasons, Wellman Industries, Inc. respectfully prays that this petition for certiorari be granted.

Respectfully submitted,

ROBERT M. SALTZSTEIN
ROBERT M. ZISKIN

MIRKIN, BARRE,
SALTZSTEIN &
GORDON, P.C.
Attorneys for Petitioner
98 Cutter Mill Road
Great Neck, New York 11021

APPENDIX A — DECISION AND ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JD-575-75
Johnsonville, S.C.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
WASHINGTON, D.C.

WELLMAN INDUSTRIES, INC.

and

TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC

Case Nos. 11-CA-5827
5885
5938
5947
5962
6009
6011
6075
6092
6101

J. Pargen Robertson and Paris Favors, Esqs., Winston-Salem, N.C., for the General Counsel.

Robert M. Ziskin and Robert M. Saltzstein, Esqs. (Mirkin, Barre, Saltzstein & Gordon), Great Neck, N.Y., and Peter D. Hyman and Regnald C. Brown, Jr., Esqs. (Hyman, Morgan & Brown), Florence, S.C., for the Respondent.

James A. Johnson and George Justice, Andrews, S.C., for the Charging Party.

Appendix A — Decision and Order of the National Labor Relations Board

DECISION

Statement of the Case

CHARLES W. SCHNEIDER, Administrative Law Judge: On various dates from August 5, 1974 to May 20, 1975, Textile Workers Union of America, AFL-CIO, CLC, the Union, filed unfair labor practice charges, and amended charges, against Wellman Industries, Inc., the Respondent, in the above-captioned cases. On various dates from October 10, 1974 to June 9, 1975, the Regional Director issued complaints against the Respondent, or the complaint was amended, alleging that the Respondent had engaged in various unfair labor practices, hereinafter described, in violation of the National Labor Relations Act, 29 U.S.C., 152, 158.[1] Respondent duly filed an

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1. The dates of filing of charges, complaints and amendments are as follows:

Date	Document	Case No.
August 5, 1974	Charge	11-CA-5827
" 20 "	amended charge	5827
Sept. 17 "	2d amended charge	5827
Oct. 2 "	charge	5885
Oct. 10 "	Complaint	5827
Nov. 14 "	amended charge	5885
Nov. 15 "	charge	5938
Nov. 22 "	charge	5947
Dec. 6 "	amended charge	5938
Dec. 6 "	amended charge	5947
Dec. 6 "	charge	5962
Dec. 6 "	2d amended charge	5885
Jan. 5, 1975	Consolidated complaint	5827, 5885, 5938, 5947, 5962
Feb. 5 "	charge	6009
Feb. 11 "	charge	6011
March 11 "	order amending complaint to add	6009, 6011

(Cont'd)

Appendix A — Decision and Order of the National Labor Relations Board

answer and amended answers denying all the allegations of unfair labor practice.

Pursuant to notice a hearing was held before me in Georgetown, South Carolina on February 5, 1975, and on July 8 and 9, 1975. All parties appeared at the hearing and were afforded full opportunity to participate, to introduce and to meet material evidence, and to engage in oral argument. Briefs were filed on August 26, 1975 by the General Counsel and the Respondent, and have been considered.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. Jurisdiction

Respondent is now, and has been at all times material herein, a Delaware corporation engaged in the manufacture of wool and synthetic fiber products. Respondent owns and operates a plant at Johnsonville, South Carolina, which is the only plant involved in this proceeding.

Respondent, during the past 12 months, which period is representative of all times material herein, manufactured, sold

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(Cont'd)

April 14 "	charge	6075
April 22 "	charge	6092
May 2 "	charge	6101
May 2 "	amended charge	6075
May 2 "	amended charge	6092
May 12 "	2d amended charge	6075
May 20 "	amended charge	6101
June 9 "	order adding to complaint	6075, 6092, 6101

and directly shipped from its Johnsonville, South Carolina, plant, goods of a value in excess of $50,000 to points and places outside the State of South Carolina. During the same period of time, Respondent caused to be shipped directly to its Johnsonville, South Carolina, plant, goods and raw materials of a value in excess of $50,000 from points and places outside the State of South Carolina.

Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. The Labor Organization Involved

Textile Workers Union of America, AFL-CIO, CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. The Unfair Labor Practices

A. Summary of Issues

The General Counsel contends, and the Respondent denies, that the Respondent engaged in violations of Section 8(a)(5) and (1) of the Act by the following conduct: (1) Maintaining and enforcing absence and tardiness rules which the Board had previously found to have been unlawfully promulgated, and discharging employees in enforcement of the rules, (2) unilaterally changing existing terms and conditions of employment by (a) laying off employees (b) transferring employees (c) reducing employees' pay, and (d) changing the on-call and shift rotation systems in the maintenance department — all without notice to or consultation with the Union.

There is no contention that the Respondent was motivated by anti-union animus.

B. The Prior Case

On June 14, 1972, the Board's Regional Director certified the Union as the exclusive collective-bargaining representative of the Respondent's employees in the following appropriate unit:

> All production and maintenance employees including laboratory technicians, plant clerical employees, scheduler and following man, process control technicians, maintenance technician and quality control technicians employed at the Employer's Johnsonville, South Carolina plant, excluding office clerical employees, professional employees, sales personnel, seasonal employees, messenger and mail clerk, fabric designer, watchmen, guards and supervisors as defined in the Act.

By written request on June 24, 1972, and at various times thereafter, the Union requested the Respondent to bargain in the appropriate unit, and to consult with the Union concerning changes in policies, rules, or other action affecting terms and conditions of employment of employees in the appropriate unit. These requests the Respondent uniformly rejected, on the ground that the certification was invalid.

On August 25, 1972, the Respondent changed its work schedules; on August 25 and 27, 1972, it laid off employees; on October 2, 1972, it granted a wage increase to employees; and on January 29, 1973, it promulgated new absence and tardiness rules governing employees. All these actions were taken unilaterally, and without notice to or consultation with the Union.

Appendix A — Decision and Order of the National Labor Relations Board

Upon unfair labor practice charges filed by the Union, and following hearing in accordance with the Act, the Board issued a Decision and Order on June 17, 1974, in which it found that by refusing to bargain with the Union, and by the conduct described in the proceding paragraph the Respondent had violated Section 8(a)(1) and (5) of the Act. ***Wellman Industries, Inc.***, 211 NLRB No. 96. In its Order the Board ordered the Respondent to cease and desist from the proscribed actions, and to bargain with the Union. However the order did not affirmatively direct the Respondent to withdraw or abrogate the January 1973 absence and tardiness rules. On April 1, 1975, the Court of Appeals for the Fourth Circuit granted enforcement of the Board's order in a *per curiam* decision. F.2d , 88 LRRM 3303. I am advised that the Respondent has since filed a petition for certiorari with the U.S. Supreme Court.

C. <u>The Present Charges</u>

We turn now to the issues raised by the instant complaints. All the actions alleged, and hereinafter described, were taken by the Respondent unilaterally, that is, without notice to or consultation with the Union.

1. The discharges for absences and tardiness

The absence and tardiness rules in effect prior to January 29, 1973, are contained in Appendix A attached hereto. The rules adopted in January 1973, which were found by the Board to have been unlawfully promulgated, are contained in a copy of a memorandum issued to employees by the Respondent on January 29, 1973, and in the Respondent's Policy Manual, distributed to employees, and are reproduced in Appendix B attached hereto. The new rules established a numerical point system.

Appendix A — Decision and Order of the National Labor Relations Board

Following the issuance of the Board's Decision and Order in the prior case on June 17, 1974, the Respondent continued to maintain and enforce the January 1973 rules without evident change.

On various dates between June 2, 1974 and April 2, 1975, the Respondent discharged a number of employees for accumulating in excess of the 48 points allowed under the 1973 rules. The General Counsel alleges these discharges to be unlawful. The merits of that contention are discussed in the conclusions, *infra*.[2]

2. Unilateral layoffs

During the period July 1974 through March 1975, the Respondent's employment varied from a high of 1178 persons to a low of 762. From July 1, 1974 through March 1975, the Respondent laid off 366 employees.

3. Unilateral transfers

During the period from July 26, 1974 to March 24, 1975, the Respondent unilaterally transferred a number of employees to other jobs. Most of these, though not all, were caused by reductions in force due to a cutback in operations.[3]

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2. Those named in the complaint and concerning whom evidence was introduced are as follows: Willie T. Wilson, Booker T. Jones, Willis Mitchell, Liston Johnson, Roy Gibson, James Dorsey, Joan Murphy, Wesley Wilson, John Gouse, and Oliver Dozier.

3. The record identifies eight such employees: Lloyd Haselden, Ronald Anderson, Fred Ellison, Roger Hayward, Kelly Pressley, Adam McKnight, William Mitchell and Dessie Pressley. Haselden's transfer was because of a reduction in force and also because he had asked to be taken off a cutter. McKnight was transferred on December 16, 1974, from B-line operator to bail

(Cont'd)

4. Reductions in pay

In the process of being unilaterally transferred, most of the employees identified in subsection 4 above also had their pay unilaterally reduced — presumably because the new job carried a lower pay scale.[4]

5. Miscellaneous layoffs, transfers, and reductions in pay or classification

A number of other employees were the recipients of a combination of unilateral action, such as a layoff followed by unilateral transfer and pay reduction, or recall from layoff to a lower classification and pay rate.[5]

6. "On-call system"

In late June 1974, the Respondent unilaterally changed its on-call requirements for maintenance employees.

Prior to June 26, 1974, the Respondent relied upon a

(Cont'd)

press operator because of a reduction in force and was thereafter transferred again to bobbin hauler because he "had serious problems" with the baler press job.

4. These employees are identified in the record as Ronald Anderson, Fred Ellison, Roger Hayward, Kelly Pressley, Adam McKnight, William Mitchell and Dessie Pressley. Some of them were reduced more than once, due to successive transfers. These were Anderson, Ellison, McKnight, Mitchell and Dessie Pressley.

5. Among those identified as being in this category were John Bishop, Robert Donnelly, Jr., Walter Garrett, Grant Nesmith, Kenneth Nesmith, Thelma R. Rogers, Cubit Scott and George Shefton.

volunteer system for securing emergency help from off-duty employees in the maintenance department. If emergency assistance was needed the supervisor would simply call off-duty employees until he found some willing to come in. However by June 1974 the Respondent was having difficulty securing emergency help by that procedure. For that reason, and also in order to equalize overtime resulting from call-ins, the Respondent established a program in June 1974 by which employees were scheduled as on-call during definite periods of time. Compliance with this schedule was mandatory. Failure to report when called would result in a "write-up", with termination resulting from the accumulation of three such write-ups.

7. Shift rotation

In September 1973 the Respondent instituted a school or program to train its maintenance personnel, using the services of Florence Darlington Technical Institute. Concurrently the Respondent encouraged its maintenance employees to attend the school, with promises of wage increases and other benefits for attendance. However attendance was not compulsory, and employees were advised that their jobs would not be jeopardized if they did not attend.

Since the school was conducted at night, this conflicted with the schedules of maintenance employees who worked on the night shift. Initially night shift employees who attended the school were required to clock-out during the period of their school attendance. However, beginning in December 1974 the Respondent, in order to avoid the conflict, placed all maintenance personnel attending the school on the day shift. This required the transfer of sufficient day shift personnel to the night shift as to accommodate the students.

D. Conclusions

1. As to the allegations other than the absence and tardiness rules

In the prior *Wellman* case, among the Respondent's actions which the Board found violative of Section 8(a)(1) and (5) of the Act was its unilateral laying off of employees. It follows that the Respondent's similar action in the instant case is equally violative. The same must be found as to the unilateral transfers, reductions in pay or classification, and the changes in the on-call and the shift rotation systems. All involved terms and conditions of employment of employees in the bargaining unit, on which the Union was entitled to be consulted prior to their institution. *N.L.R.B. v. Katz*, 369 U.S. 736 (1962); *Cloverleaf Cold Storage Co.*, 160 NLRB 1484; *Chevron Oil Co.*, 168 NLRB 574; *Legato Industries, Inc.*, 194 NLRB 999; *Capital Electric Power Association*, 171 NLRB 262; *Southwestern Pipe, Inc. v. N.L.R.B.*, 444 F.2d 340 (C.A. 5, 1971).

The basic defense interposed by the Respondent as to those actions is that they were economically or operationally motivated, and taken in good faith. Such a defense does not excuse unilateral action upon matters within the authority of the bargaining representative. Economic or operative motivations do not excuse unfair labor practices. The authority, duties, and prerogatives of a bargaining representative are dictated by the statute, and they are not subject to diminution or modification because of an employer's good faith or economic necessity.[6] In

6. As the Court of Appeals said in the case of *N.L.R.B. v. Star Publishing Co.*, 97 F.2d 465, 470 (C.A. 8, 1938):

> "The respondent further contends that it was necessary to make the transfer, and thus engage in the unfair labor

(Cont'd)

any event, the economic or operational factors did not require the Respondent to ignore the Board's certification and make the changes unilaterally. That choice the Respondent made voluntarily on its own initiative.

Nor is it controlling that in some instances the unilateral action may have been of benefit to employees. Clearly it was not so in all cases and situations. But even if it be thought that they were, that does not moot the action. For, in the first place, that is a matter of opinion on which reasonable minds may differ. In the second place, the evaluation is a relative one, the answer to which may depend upon choice and weight as between alternatives. And finally — and of most importance — it involves a determination as to which elements in the employment equation are of primary interest to employees, and which secondary. That involves choices and balancing of interests committed to the bargaining representative.

It is found that by the unilateral layoffs, transfers, reductions in pay and classification, and changes in the on-call and shift rotation systems described above, the Respondent violated Section 8(a)(1) and (5) of the Act.

2. The discharges under the absence and tardiness rules

The General Counsel contends that since the absence and

(Cont'd)

> practice, because its business would otherwise be disrupted, and therefore, under all the facts, the transfer was excusable. We think, however, the act is controlling. The act prohibits unfair labor practices in all cases. It permits no immunity because the employer may think that the exigencies of the moment require infraction of the statute. In fact, nothing in the statute permits or justifies its violation by the employer."

tardiness rules enacted in January 1973 were found by the Board in the prior case to have been enacted unlawfully, the 1974 and 1975 discharges pursuant to those rules were equally unlawful. The Respondent's defense is that the Board did not find the rules to be *per se* unlawful, but only the manner of their enactment, and since the Board did not order them to be abrogated, they constituted a legitimate basis for the discharges. In this connection the Respondent argues that Section 10(b) of the Act forbids issuance of the complaint, for the reason that there is no timely charge. At the hearing I indicated doubt that Section 10(b) applied, and requested discussion of the point in briefs. The Respondent has done so.

In addition the Respondent asserts that most of the discharged employees would in any event have been discharged, or subject to discharge, under the old rules. This contention I find not sustained for the following reasons.

Comparison of the old and the new rules discloses a number of significant differences: (1) The old rules operated on a calendar year basis, whereas the new rules provide for yearly periods based on the employee's hiring date. Thus (as in fact happened) employees might accumulate 48 points within the anniversary year and be discharged, whereas in the calendar year they would not have had 48 points. (2) The new rules provide automatic points for tardiness. The old rules stated no specific penalty for tardiness, other than an allowance of "six excused tardinesses and/or excused absences in one calendar year." (3) Though the old rule stated that an employee would not be allowed more than six excused tardinesses and/or excused absences, in practice that provision was not necessarily followed.[7] As has been seen, the new rules are automatic as to

7. Thus Personnel Director Mathews testified:

(Cont'd)

any absence subject to point charges, and contain no provision for excused absences or tardiness. (4) Under the old rules superiors had discretion as to whether to excuse an absence or failure to give timely notice. The new rules provide no such discretion. (5) Under the old rules an employee denied prior permission to be absent, could then elect to come to work, and thus avoid penalty. Under the new rules no such election is possible.

In the case of all of the discharges on the basis of the point system named in the complaint, the change from the old rules to the new rules resulted in automatic discharges which either would not, or may not, have occurred under the old rules, because of the operation of one or more of the following factors: The imposition of points for tardiness, imposition of points for excused absences, substitution of the anniversary year for the calendar vear, absences which may have been excused under the old rules, and, finally, non-enforcement of the old provision respecting six absences or tardinesses.

(Cont'd)

> "Q. It [the old rule] doesn't mean he will automatically be terminated after six [excused absences] does it? A. That's correct.
>
> JUDGE SCHNEIDER: It does not mean that if he had six absences he would necessarily be terminated?
>
> THE WITNESS: That is correct.
>
> JUDGE SCHNEIDER: But if he had three unexcused absences he would necessarily be terminated, is that correct?
>
> THE WITNESS: Yes."

We come then to the nub of the issue: Can the complaint be sustained as to the discharges under the January 1973 rules? I have concluded, for the following reasons, that it cannot.

At the outset, it must be observed that the January 1973 rules are not intrinsically, or *per se,* unlawful.[8] Nor has the Board found them to be. No provision in the Act forbids the legal enactment or maintenance of those rules.

The Board is empowered by Section 10 of the Act to require a person found guilty of an unfair labor practice to cease and desist from such action and "to take such affirmative action . . . as will effectuate the policies of this Act." It is not contested that this provision authorizes the Board upon appropriate charge and complaint to order a respondent to set aside and abrogate rules of such character. As examples of the exercise of such authority see *Wilkinson Manufacturing Co.,* 187 NLRB 791; *Murphy Diesel Co.,* 184 NLRB 757. If the Board had done so here, and the Respondent had thereafter failed to comply, discharges attributable to those rules would thus have been unlawful, as the General Counsel contends.

However, the Board did not use such language in its order, or find the new rules intrinsically unlawful. The question then is: what is the significance of those omissions?

The theory of the complaint is that the rules are unlawful because the Board found them unlawfully enacted in the prior case, and that the unfair labor practice lies in the continued maintenance and enforcement of them thereafter. Thus, the controlling issue is: what interpretation is to be given the Board's

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8. As is, for example, a rule requiring union membership as a condition of hiring.

order? For the charge upon which the Board found the promulgation of the rules to be unlawful was timely filed. And if the Board has ordered the discontinuance of the rules, they could not presently be a defense to the present complaint. On the other hand, if the Board did not order the rules disestablished, there is no basis for declaring enforcement thereafter to be illegal. Thus, I find no 10(b) issue involved.

The Board's usual policy is to require the discontinuance of conditions of employment found to have been unlawfully established, and where the Administrative Law Judge has not included such a provision in his recommended order, the Board may add one. *Southland Paper Mills, Inc.,* 161 NLRB 1077; *Wittock Supply Co.,* 171 NLRB 201; *Allied Products Corporation,* 218 NLRB No. 188. However, where the condition is not intrinsically unlawful, the Board may sometimes permit it to stand (as, for example, a wage increase, or conditions established by contract with a minority union: *American Beef Packers,* 176 NLRB 338); or it may give the bargaining representative the option to so require. *Herman Sausage Co.,* 122 NLRB 168; *Bastian-Blessing,* 194 NLRB 609.

In ascertaining what interpretation should be given the Board's order in the prior case, the positions taken by the parties in that case are relevant.

The General Counsel and the Charging Party there advised the Administrative Law Judge that they were "seeking no relief other than an order with regard to the unilateral changes." (Transcript of hearing in that case, p. 10, August 13, 1973). In his Supplemental Decision on February 28, 1974 (the decision which was the basis for the Board's Decision and Order of June 17, 1974), the Administrative Law Judge recommended a bargaining order, and an order requiring the Respondent to

cease and desist from refusing to bargain, unilaterally changing conditions of employment, and interfering with employee rights under Section 7 in any like or related manner.

The General Counsel does not appear to have filed any exceptions or brief to that Decision of the Administrative Law Judge. However, the charging party filed an exception supported by a brief, and the Respondent filed a response thereto. The exception was to the Administrative Law Judge's failure to recommend a "make-whole order." It stated, in part:

> A cease and desist order is an insufficient remedy to cure both the willful refusal to bargain and the numerous unilateral changes made since the duty to bargain arose. Only a make-whole order can restore the status quo and deter the employer from further unfair labor practices.

In support of its position the charging party cited a number of Board decisions, including the *Herman Sausage* and *Wittock Supply* cases, *supra*. In the Respondent's brief to the exceptions of the charging party, the Respondent argued to the Board that a make-whole order was inappropriate in the circumstances of the case.

It is thus clear that the question of the scope of the remedial order, and the failure of the recommended order to contain more affirmative recommendations, were specifically brought to the attention of the Board. It is true that the charging party did not in *haec verba* request an order to the Respondent to set aside the absence and tardiness rules. However, the exceptions and the argument clearly presented the issue for decision. In those circumstances, the Board's action in permitting the recommended order to stand is to be interpreted as a refusal to order the rules to be set aside.

In such a setting the Respondent's continued maintenance and enforcement of the rules enacted in January 1973 was not in violation of the Board's Order of June 17, 1974. No other basis for an unfair labor practice finding is suggested. There is, therefore, no support in the evidence for the allegation in the present complaint that by continuing to maintain and enforce the new rules after the issuance of the Board's decision in the prior case, the Respondent acted in violation of the Act.

It will therefore be recommended that that allegation of the complaint be dismissed.

In the light of those findings it is unnecessary to further consider the applicability of Section 10(b) of the Act (Cf. *Koppers Co., Inc.*, 163 NLRB 517), or whether principles of *res judicata* bar the complaint with respect to the allegations. (Cf. *Monroe Feed Store*, 112 NLRB 1336; *Peyton Packing Co.*, 129 NLRB 1358; *Forrest Industries, Inc.*, 168 NLRB 732; *Int. Union Electrical Workers v. N.L.R.B.*, 367 F.2d 333 (C.A.D.C. 1966); *Marland One-Way Clutch Co., Inc.*, 200 NLRB 316.)

However, it is possible that the Board may disagree with my interpretation of its order. I therefore make an alternative finding to the following effect: if the Board finds that the Respondent's maintenance and enforcement, since June 17, 1974, of the absence and tardiness rules enacted in January 1973 was in violation of the Board's Order of June 17, 1974, I find that the discharges of the employees named above for the accumulation of 48 or more points under that rule was an unfair labor practice violative of Section 8(a)(1) and (5) of the Act, and the employees so discharged should be reinstated and compensated for their loss of earnings or other benefits during the period of their discharge. While the Respondent contends that those employees (or at least most of them) would have been

discharged in any event under the terms of the pre-1973 absence and tardiness rules. I do not find that to be so. And while there may have been some benefit to employees under the new rules, the overall effect, in my judgment, was to the detriment of the employees.

IV. The Remedy

Having found that the Respondent has engaged in unfair labor practices I shall recommend that it cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

It will be recommended that the Respondent cease and desist from laying off, transferring, or reducing the pay or classification of employees, or changing its on-call or shift rotation systems, or making any changes in terms or conditions of employment of employees in the bargaining unit, without bargaining with the Union about the matter.

It will also be recommended that the Respondent bargain with the Union, upon request, and if an understanding is reached, embody such understanding in a signed agreement.

In addition, it will be recommended that, if requested by the Union to do so, the Respondent rescind the unilateral layoffs, transfers, reductions in pay or classification and changes in the on-call and shift rotation systems.

Since it is possible that the Respondent's violations resulted in loss of employment or earnings to employees, they are entitled to compensation therefor, and effectuation of the policies of the Act requires it. It will therefore also be recommended that the Respondent make whole any employee who lost employment,

was reduced in employment, or lost wages or other benefits as a consequence of the Respondent's unilateral layoffs, transfers, reductions in pay or classification, or changes in the on-call and shift rotation systems. This is not to say that all the employees affected by the unilateral actions are consequently and *ipso facto* entitled to payments or re-classification of some kind. Whether any particular employee would have been laid off, transferred, reclassified, reduced in pay, etc., but for the unfair labor practices, and for what periods of time, and entitled to reinstatement, or to reimbursement and if so in what amount, are questions to be resolved in a compliance proceeding, if the parties are unable to reach agreement on such issues. Suffice to say here that the Respondent's unfair labor practices require an effective remedial order, and, in my judgment, nothing less will suffice to remedy the unfair labor practices. *Cloverleaf Cold Storage Co.*, 160 NLRB 1484, 1493-5.

Upon the basis of the foregoing findings of fact, conclusions of law, and the entire record, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended:[9]

ORDER

A. For the purpose of determining the duration of the certification, the initial year of certification shall be deemed to begin on the date the Respondent commences to bargain in good

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9. In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions and Order, and all objections thereto shall be deemed waived for all purposes.

faith with the Union as the recognized exclusive bargaining representative in the appropriate unit.[10]

B. Wellman Industries, Inc., its officers, agents, successors and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with Textile Workers Union of America, AFL-CIO, CLC as the exclusive representative of the Respondent's employees in the appropriate unit described above, with respect to wages, hours and other terms and conditions of employment.

(b) Laying off or transferring employees, or reducing their pay or classification, or making changes in its on-call or shift rotation systems, without first bargaining with the Union about the matter.

(c) Taking any action affecting conditions of employment of employees in an appropriate bargaining unit without first notifying and consulting the bargaining representative:

(d) In any other manner interfering with, restraining or coercing employees in the exercise of rights guaranteed by Section 7 of the Act.

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10. The purpose of this provision is to insure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law. See *Mar-Jac Poultry Co.*, 136 NLRB 785; *Commerce Co., d/b/a Lamar Hotel*, 140 NLRB 226, 229, 328 F.2d 600 (C.A. 5, 1964); cert. den., 379 U.S. 817; *Burnett Construction Co.*, 149 NLRB 1419, 1421, 350 F.2d 57 (C.A. 10, 1965).

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Bargain collectively with the Union as the exclusive representative of Respondent's employees in the appropriate unit with respect to wages, hours and other terms and conditions of employment, and if an understanding is reached, embody such understanding in a signed agreement;

(b) If requested by the Union to do so, rescind the unilateral layoffs, transfers, reductions in pay, and changes in the on-call and shift rotation systems heretofore make;

(c) Offer to any employee unilaterally reduced in classification, reinstatement to his former classification;

(d) In accordance with the Remedy section, above, make whole any employee for any loss of pay or other benefits he may have suffered by reason of any of the Respondent's unilateral changes referred to above.

(e) Preserve and, upon request, make available to the Board or its agents, for examination and copying, all payroll records, social security payment records, timecards, personnel cards and reports, and all other records necessary for determination of the amount due employees.

(f) Post at the Respondent's premises copies of the notice attached hereto and marked "Appendix C."[11] Copies of

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11. In the event the Board's Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

said notice, to be furnished by the Regional Director for Region 11, shall, after being duly signed by a representative of the Respondent, be posted by it immediately upon receipt thereof, and maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to insure that said notices are not altered, defaced or covered by any other material.

(g) Notify the Regional Director for Region 11, in writing, within 20 days from the date of this Order, what steps the Respondent has taken to comply herewith.

Dated at Washington, D.C.

s/ Charles W. Schneider
Charles W. Schneider
Administrative Law Judge

"APPENDIX A"

ABSENCES AND TARDINESS

Your attendance record with the Company will be an important factor in judging your work habits and dependability. Regular attendance and being on time for work is necessary for efficient production.

In order to maintain an efficient department, your supervisor depends on you to be at work every scheduled work day unless you have been notified there is no work. Our work is planned in advance and you are counted on to do your job.

Records of your absences will be kept by the Personnel Department.

ABSENCE & TARDINESS RULES AND REGULATIONS:

1. If you have justifiable reason for being absent, you must notify the Company at least two hours in advance giving the reason for your absence and the length of time you expect to be absent. The reason for your absence must be acccptable by the Company.

2. In no event will an employee be allowed more than six excused tardinesses and/or excused absences in one calendar year (January 1 to December 31) by his shift overseer without his shift overseer having obtained approval from the General Overseer and the Personnel Director. Each Medical Leave shall be considered as one excused absence, but each day an employee is absent for personal reasons shall be considered one absence.

3. An employee who gives a false statement about his reason for being absent shall be discharged.

4. An employee absent because of sickness may be required to get a clearance from a physician before reporting back to work.

5. If an employee's reason for being absence is not acceptable by the Company, the absence will not be excused. An employee will be given a written warning for his first and second unexcused absences within a calendar year (January 1 through December 31), and he will be discharged for his third offense.

6. If an employee is absent for three or more consecutive working days without notification to the Company, he will be discharged.

7. An employee who returns from an unexcused absence will not be eligible for reporting pay if there is not any work for him.

"APPENDIX B"

WELLMAN INDUSTRIES, INC.

Johnsonville, S.C.

MEMORANDUM

DATE: January 29, 1973

TO: All Employees

FROM: Personnel Doug Matthews

RE: ABSENCE AND TARDINESS RULES AND REGULATIONS

In order to insure consistency in our absence and tardiness rules and regulations, effective February 1, 1973, the absences and tardinesses will be computed on a point system. By using the point system, you can better understand the relationships between absences with prior notification, without prior notification, leaves, tardinesses, etc. Also, you can better tell how you stand on absences and tardinesses at all times by adding the total number of points charged to you.

The following absence and tardiness rules and regulations supersedes the absence and tardiness rules and regulations in the Wellman Industries, Inc. policy manual (page 5 and 6; paragraphs 1, 2, 3, 4, 5, 6, 7).

Absence and tardiness rules and regulations:

Each employee will begin the calendar year with forty eight (48) points. Although the employee is allowed forty eight (48) points per year, using of the points is to be discouraged.

Absences due to hospital confinement for illness or injury, occupational injuries, jury duty, deaths in the immediate family, military duty, maternity or personal leaves of absence are not subject to point charges.

If an employee is absent for any reason other [sic] the exceptions stated above, the employee will be charged four (4) points per absence provided notification is given supervision of intent to be absent at least two hours prior to the employee's normal work starting time. When the absences occur on the employee's last scheduled work day before, during, or on the employee's first scheduled work day after a paid holiday or recognized holiday for premium pay, the employee will be charged eight (8) points per absence provided notification is given supervision of intent to be absent at least two hours prior to the employee's normal work starting time.

All consecutive days absent due to illness or non-occupational injury will count as one excused absence provided the employee submits a doctor's statement about his reason for being absent. Employees will be charged four (4) points for each one of these excused absences.

When an employee is absent and does not notify supervision at least two hours prior to his normal work starting time, the employee will be charged sixteen (16) points for each absence.

The employee will be charged two (2) points for each tardiness.

When an employee has been charged twenty four (24) points, he will be counseled by his department supervisor and advised that he has twenty four (24) points remaining.

When an employee has been charged thirty two (32) points, he will be counseled by the department supervisor and advised that he has only sixteen (16) points remaining. This will be a written warning and will be placed in the employee's folder.

When an employee has consumed forty eight (48) points, he will be counseled by the department manager and the Employee Relations Supervisor and reminded that he has no points remaining and can have no more absences other than the exceptions without termination. At this time, the second notice of warning will be placed in the employee's folder.

Absences and tardiness prompting charging of over forty eight (48) points will result in termination.

An employee who gives a false statement about his reason for being absent shall be discharged.

An employee who is absent without notifying supervision will not be eligible for reporting pay on the first scheduled work day after his absence if he returns to work and there is not any work available for him.

If an employee is absent three or more consecutive working days without notification to the Company, the employee will be regarded as having quit and he will be terminated.

Since we are beginning the point system on February 1, 1973, all absences and tardinesses for the month of January 1973, will not be charged for the calendar year of 1973.

If you have any questions concerning the rules and regulations, notify your supervisor.

DM:ia

"APPPENDIX C"

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE

NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A HEARING, THE BOARD HAS FOUND THAT WE REFUSED TO BARGAIN COLLECTIVELY WITH TEXTILE WORKERS UNION OF AMERICA, AFL-CIO, CLC AS THE EXCLUSIVE COLLECTIVE BARGAINING REPRESENTATIVE OF ALL OUR EMPLOYEES IN THE FOLLOWING APPROPRIATE UNIT:

All production and maintenance employees including laboratory technicians, plant clerical employees, scheduler and following man, process control technicians, maintenance technician and quality control technicians employed at our Johnsonville, South Carolina plant, excluding office clerical employees, professional employees, sales personnel, seasonal employees, messenger and mail clerk, fabric designer,

Appendix A — Decision and Order of the National Labor Relations Board

watchmen, guards and supervisors as defined in the National Labor Relations Act.

The Board also found that we violated the National Labor Relations Act by unilaterally laying off employees, transferring them, reducing their pay and classifications, and by making changes in the on-call and shift rotation systems, without first bargaining with the Union about those matters.

We now notify our employees that WE WILL NOT refuse to bargain collectively with the Union as the representative of employees in the appropriate unit.

In addition, WE WILL NOT lay off, transfer, or reduce employees' pay or classifications, or make changes in the on-call or shift systems, or in any other conditions of employment, without first bargaining with the Union about it.

If the Union requests that we do so WE WILL set aside the layoffs, transfers, reductions in pay and classifications, and changes in the on-call and shift rotation systems we previously made unilaterally.

WE WILL also offer any employee previously unilaterally reduced in classification, reinstatement to his former classification, if he wants it.

WE WILL reimburse employees for any pay or other benefits they lost because of our unilateral actions stated above.

WE WILL bargain with the Union upon request, and if an agreement is reached we will put it in writing and sign it.

WE WILL NOT in any manner interfere with, restrain or coerce employees in the rights guaranteed them by Section 7 of the Act.

Appendix A — Decision and Order of the National Labor Relations Board

Employees are free to join, assist or support the Union without fear of reprisals for so doing.

WELLMAN INDUSTRIES, INC.
(Employer)

Dated_____ By _____
(Representative) *(Title)*

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

DECISION AND ORDER OF NATIONAL LABOR RELATIONS BOARD, DATED JANUARY 13, 1976

FJP

222 NLRB No. 44 D—805
Johnsonville, S.C.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

WELLMAN INDUSTRIES, INC.

AND Cases 11—CA—5827, 5885, 5938, 5947, 5962, 6009, 6011, 6075, 6092, & 6101

TEXTILE WORKERS UNION OF AMERICA AFL—CIO, CLC

On October 8, 1975, Administrative Law Judge Charles W. Schneider issued the attached Decision in this proceeding.

Appendix A — Decision and Order of the National Labor Relations Board

Thereafter, the Respondent and the General Counsel filed exceptions and supporting briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, Wellman Industries, Inc., Johnsonville, South Carolina, its officers, agents, successors, and assigns shall take the action set forth in the Administrative Law Judge's recommended Order.

Dated, Washington, D.C. Jan. 13, 1976

_____
John H. Fanning, Member

_____
Howard Jenkins, Jr., Member

_____
John A. Penello, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

APPENDIX B — JUDGMENT OF THE COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 76-1066

(Filed April 8, 1977)

WELLMAN INDUSTRIES, INC.,

Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

JUDGMENT

Before: Bazelon, Chief Judge, McGowan and MacKinnon, Circuit Judges.

THIS CAUSE came on to be heard upon the petition of Wellman Industries, Inc., Johnsonville, South Carolina, to review an order of the National Labor Relations Board issued on January 13, 1976, against said Petitioner, its officers, agents, successors and assigns, and upon a cross-application of the National Labor Relations Board to enforce said order. The Court heard argument of respective counsel on February 23, 1977, and has considered the briefs and transcript of record filed in this cause. On February 28, 1977, the Court being fully advised in the premises, handed down its order denying the petition for review and granting enforcement of the Board's order. In conformity therewith it is hereby

Appendix B — Judgment of the Court of Appeals for the District of Columbia Circuit

ORDERED AND ADJUDGED by the United States Court of Appeals for the District of Columbia Circuit that the said order of the National Labor Relations Board in said proceeding be enforced, and that Wellman Industries, Inc., Johnsonville, South Carolina, its officers, agents, successors and assigns, abide by and perform the directions of the Board in said order contained.

David L. Bazelon
s/ David L. Bazelon
Chief Judge, United States Court of Appeals for the District of Columbia Circuit

Carl McGowan
s/ Carl McGowan
Circuit Judge, United States Court of Appeals for the District of Columbia Circuit

George E. MacKinnon
s/ George E. MacKinnon
Circuit Judge, United States Court of Appeals for the District of Columbia Circuit